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5 *Special Master*

6
7 UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
9

10 RAHINAH IBRAHIM,

11 Plaintiff,

12 v.

13 DEPARTMENT OF HOMELAND
14 SECURITY, et al.,

15 Defendants.
16

Case No. C-06-00545 WHA

**REPORT AND RECOMMENDATION OF
SPECIAL MASTER ON EXPENSES**

1 The undersigned special master hereby submits the instant Report and Recommendation on
2 the amount of expenses Plaintiff Rahinah Ibrahim (“Plaintiff”) should be awarded pursuant to the
3 Equal Access to Justice Act, 28 U.S.C. § 2412, and the Court’s prior rulings regarding entitlement.
4 This report and recommendation on expenses is a follow-on to the report and recommendation on
5 attorney’s fees previously submitted and relies on much of the analysis articulated in that prior
6 report and recommendation (Dkt. No. 787). As explained further below, it is recommended that
7 \$34,768.71 in expenses be awarded by the Court.

8 BACKGROUND

9 Plaintiff’s initial fee application sought \$293,860.18 in expenses (Dkt. Nos. 694-699).
10 Defendants objected to any expenses being awarded, arguing Plaintiff’s counsel had not submitted
11 itemized records to support entitlement to those expenses (Dkt. No. 709 at 25). Plaintiff’s counsel
12 thereafter filed a reply declaration, appending itemized lists that purported to support the expenses
13 (Dkt. No. 712). The Court struck the reply declaration and exhibits, ruling that it should have
14 been submitted with the initial fee application (Dkt. No. 715).

15 In its entitlement order on fees and expenses (Dkt. No. 739, hereinafter “Entitlement
16 Order”), the Court found that the initial application for expenses did not indicate whether expenses
17 were “reduced for inefficiency or non-prevailing claims” and failed to explain why the expenses
18 were reasonable or recoverable (*id.* at 28). The Entitlement Order further noted that the stricken
19 spreadsheets appended to the reply declaration were “largely insufficiently detailed” (*id.* at 29).
20 Nonetheless, the Court ultimately found Plaintiff’s counsel to be entitled to reasonable expenses
21 “in accordance with the issues identified in [the Entitlement Order]” but specified that Plaintiff’s
22 counsel was to “timely serve detailed documents” supporting the expenses (*id.* at 29).

23 Concurrent to the initial fee application, Plaintiff’s counsel filed a bill of costs seeking
24 \$58,615.31 in costs (Dkt. No. 693). In support of the bill of costs, Plaintiff’s counsel submitted
25 invoices for each of the categories of costs sought (Dkt. Nos. 693-1, 693-2, 693-3, 693-4, 693-5,
26 693-6). Plaintiff’s counsel also later submitted “supplements” to the fee application (itemized lists
27 of costs by category), but these were stricken by the Court as untimely (Dkt. Nos. 704-707, 741 at
28

1 2). After a review of the costs claimed by Plaintiff's counsel and objected to by Defendants, the
2 Court reduced the Clerk's taxation of costs from \$53,699.13 to \$20,311.25, with the provision that
3 an additional sum for service fee expenses would be awarded pursuant to the parties' stipulation
4 (Dkt. Nos. 713, 717, 741). The Court's order on taxation of costs also specified that "[t]imely
5 unrecovered costs may be submitted to the special master as 'expenses'" (Dkt. No. 741 at 8).
6 Later, the parties stipulated to an additional sum of \$329.42 for service fee expenses, bringing the
7 total taxed costs to \$20,640.67 (Dkt. Nos. 754, 755).

8 Plaintiff's revised fee application re-submitted all unrecovered costs as expenses, in
9 addition to those expenses initially sought in the initial fee application (Dkt. No. 756). In support
10 of these expenses, Plaintiff's counsel submitted itemized spreadsheets that were almost identical to
11 those spreadsheets previously submitted to the Court as exhibits to the stricken reply declaration in
12 support of the initial fee application and the stricken "supplements" to the bill of costs (*compare*
13 Dkt. No. 756-10 *with* Dkt. Nos. 704-707, 712). No invoices, receipts, or credit card statements
14 substantiating any of the expenses were submitted with the revised application. Nor was any
15 additional explanation regarding the expenses provided. The only explanation offered for the
16 expenses was Plaintiff's counsel's declaration that the submitted spreadsheets listing the expenses
17 were "true and correct spreadsheets summarizing the costs and expenses for which plaintiff's
18 counsel seeks reimbursement" and "were created by consulting the bookkeeping records of
19 plaintiff's counsel, created in the ordinary course of business at the time the costs were incurred"
20 (Dkt. No. 756 at ¶ 39). Plaintiff's counsel also listed the hourly rates at which its experts billed
21 their time and appended a list of authorities that Plaintiff's counsel contended support the recovery
22 of expenses (*id.* at ¶ 40; Dkt. No. 756).

23 Defendants objected to the claimed expenses and to any consideration of the itemized
24 spreadsheets contained in Dkt. No. 756-10 by the special master; however, the special master
25 obtained clarification from the Court that the spreadsheets may be considered in coming to a
26 recommendation on expenses (Dkt. Nos. 757, 788).

LEGAL STANDARD

Under the Equal Access to Justice Statute (“EAJA”), 28 U.S.C. § 2412, out-of-pocket expenses incurred by an attorney that would normally be charged to a paying client are recoverable. *See International Woodworkers of America v. Donovan*, 792 F.2d 762, 767 (9th Cir. 1985). The expenses must both be reasonable and necessary to the preparation of the party’s case. 28 U.S.C. § 2412(b), (d)(2)(A). Expenses that are not “incurred or expended solely or exclusively in connection with the case before the court” or that the Court determines to be unreasonable or unnecessary to the case, are not awardable under the EAJA. *Jean v. Nelson*, 863 F.2d 759, 778 (11th Cir. 1988) (*quoting Oliveira v. United States*, 827 F.2d 735, 744 (Fed. Cir. 1987)).

FINDINGS AND RECOMMENDATIONS

After review of the jointly submitted materials, disputed material Dkt. No. 756-10, and publicly available filings, the undersigned recommends \$31,824.13 in expenses. This recommendation is arrived at by first deducting expenses that: (1) have already been ruled to be non-recoverable by the Court or solely relate to work identified as non-recoverable in the Entitlement Order; (2) are not of the type ordinarily billed to a client; and/or (3) are insufficiently itemized/supported by the record. Depending on the nature of the expenses being requested, the remaining expenses are then recommended to be awarded at the same recovery rate that the associated attorney’s fees were recommended to be awarded (*see* Dkt. No. 787), the applicable defendant ratio at the time (*id.* at 23), the applicable default recovery rate at the time (*id.* at 19), or the overall merits recovery rate for attorney’s fees (25%) (*id.* at 113).

A. EXPENSES PREVIOUSLY SUBMITTED AS COSTS.

Plaintiff seeks to be reimbursed for *all* costs that were not taxed by the Court with the exception of a “\$3,975.00 payment by defendant and \$33.35 expert write-off.” (*Compare* Dkt. No. 741 *with* Dkt. No. 756-10 at 1). Notably, the application does not include any invoices, receipts, or other documentation to support the claimed expenses. Even so, the undersigned was able to locate at least some of the invoices relevant to the expenses at issue in Plaintiff’s original bill of costs submission (*see* Dkt. Nos. 693-1, 693-2, 693-3, 693-4, 693-5, 693-6). Each category

1 of claimed expenses is discussed below.

2 **1. Remaining Fees of the Clerk**

3 Plaintiff's counsel seeks \$1,365.00 in "remaining fees of the clerk" (Dkt. No. 756-10 at 2).
 4 As described in Plaintiff's counsel's spreadsheet, this sum includes \$455 for notice of appeal
 5 docketing fees to the district court clerk incurred on September 10, 2006, October 1, 2009, and
 6 February 17, 2010.

7 The undersigned recommends that only the September 10, 2006 notice of appeal docketing
 8 fee should be awarded as that is the only docketing appeal associated with an appeal for which the
 9 undersigned recommended attorney's fees (*see* Dkt. No. 787). The undersigned further
 10 recommends that the "defendant ratio" at the time of the appeal (5 out of 11) be applied to the
 11 \$455 docketing fee so that Defendants are only charged for their "proportion" of that expense (*see*
 12 *id.* 787 at 23).

13 The undersigned accordingly recommends \$206.82 in expenses for this category.

14 **2. Remaining Fees for Service of Summons and Subpoena**

15 Plaintiff seeks recovery of \$3,196.32 in expenses for service of summonses and subpoenas
 16 (Dkt. No. 756-10 at 3-5). These expenses include fees for service of summonses, subpoenas to
 17 produce documents, deposition subpoenas, and trial subpoenas. Each is discussed in turn below.

18 *Summonses:* The undersigned recommends that no expenses for service of summonses be
 19 awarded. Defendants have already been taxed for all summonses served on them (Dkt. Nos. 754,
 20 755). All summons expenses included in the instant request are for summonses served on
 21 defendants who did not proceed to trial or who settled with Plaintiff.

22 *Document Subpoenas:* The undersigned recommends that no expenses associated with
 23 subpoenas to produce documents be awarded. All document subpoenas were issued during a time
 24 when Defendants were dismissed from the action and for the same reasons the undersigned
 25 recommended that attorney's fees associated with such work not be awarded, the undersigned
 26 recommends no expenses be awarded (*see* Dkt. No. 787 at 63).

27 *Deposition Subpoenas:* With respect to deposition subpoenas, the undersigned
 28

1 recommends that the expenses for the 2013 Woods and 2013 Kelley deposition subpoenas
2 (\$512.84 total) be awarded. This comports with the undersigned's finding that work relating to
3 the 2013 Woods and Kelley depositions should be awarded (Dkt. No. 787 at 91, 107). Although
4 the attorney's fees for this work were found to be only partly recoverable (because there was no
5 showing made to warrant full recovery), the undersigned recommends that the subpoena expenses
6 be awarded in full, as they were fixed expenses.

7 The undersigned recommends no other deposition subpoena expenses be awarded.
8 Expenses associated with the Clapper and Holder deposition subpoenas, which were quashed,
9 should not be recovered per the Entitlement Order (Dkt. Nos. 489, 739 at 19). Likewise,
10 deposition subpoenas directed at Defendants during a time Defendants were dismissed from the
11 case should also not be recovered.

12 *Trial Subpoenas:* The undersigned does not recommend recovery for the claimed trial
13 subpoena expenses. These claimed expenses relate to subpoenas for individuals who were never
14 called at trial and to a subpoena served after trial ended (December 21, 2013 Hardy subpoena).
15 The Court explicitly declined to tax costs relating to the individuals who were subpoenaed but did
16 not testify at trial, noting it was unreasonable for Plaintiff to list 48 witnesses for trial in light of
17 the time allotted for trial (Dkt. No. 741 at 5). It is also unreasonable to charge Defendants for a
18 failed subpoena attempt made after trial ended. Accordingly, the undersigned does not
19 recommend any of these trial subpoena expenses be awarded.

20 In total, the undersigned recommends \$512.84 total for this category.

21 **3. Remaining Fees for Recorded Transcripts**

22 Plaintiff seeks \$12,416.02 in expenses for recorded deposition transcripts (Dkt. No. 756-10
23 at 6). These expenses include the cost for the transcripts themselves, video, exhibits, rough
24 transcripts, shipping fees, real-time service fees, conference room rentals, reporter's certificates,
25 wait fees, and other administrative charges. Although the charges were found not to be *taxable*,
26 this is because the Court found that Local Rule 54-3(c) does not provide for taxation of these
27 expenses. The Court did not find that the charges were unrecoverable under the Entitlement
28

Order. Moreover, the undersigned finds these expenses, while not taxable, are expenses that would reasonably be charged to a client.

The undersigned recommends that all expenses claimed be awarded in the amount that corresponds to the percentage of fees that were recommended for the work related to the relevant deposition. This means the undersigned recommends that 100% of the expenses associated with Plaintiff's deposition (\$8,412.62) be awarded in full, 0% of the charges associated with Professor Sinnar's deposition (\$442.90) be awarded, and 50% of the 30(b)(6), Kelley, and Kahn depositions (\$3,560.50) be awarded (*see* Dkt. No. 787 at 82, 87-88, 89-90, 97, 107).

In total, the undersigned recommends that \$10,192.87 in expenses for this category.

4. Remaining Fees for Witnesses

Plaintiff's counsel seek to recover \$204.06 in mileage fees paid to witnesses Paul C. Woods, Kevin Kelley, David Nevins, John Pearson, Kenneth J. Cottura, and Richard E. Pate (Dkt. No. 756-10).

The undersigned finds that mileage fees paid to witnesses are of the type reasonably charged to a client. The undersigned recommends only the mileage fees for Kevin Kelley (\$78.40) and Paul C. Woods (\$39.20) be awarded, for the same reasons that the undersigned recommends all deposition transcript expenses associated with these witnesses be awarded in full. However, the undersigned does not recommend the mileage for David Nevins, John Pearson, Kenneth J. Cottura, or Richard Pate (witnesses subpoenaed by Plaintiff but who were not called by Plaintiff at trial), for the same reasons that the undersigned does not recommend that the trial subpoena fees associated with these witnesses be awarded.

In total, the undersigned finds that \$117.60 should be awarded for this category.

5. Remaining Fees for Copy Costs

Plaintiff's counsel seek \$7,096.87 in "copy costs" (Dkt. No. 756-10 at 8).

Of the claimed expenses, \$600.28 are costs incurred in preparing Professor Kahn's documents for production at trial (Dkt. No. 741 at 6-7). Specifically, the expenses include service fees for "convert to PDF," "Blowbacks," and "DVD Duplicate." Although these costs were found

not to be taxable, the undersigned finds these are expenses that are typically charged to a client. Accordingly, the undersigned recommends these expenses be awarded at the same rate at which work related to Professor Kahn was awarded --- 50%. At 50%, these expenses total \$300.14.

The remainder of the expenses claimed (\$6,496.59) are for the creation of trial binders with exhibits for use by Plaintiff's counsel. The undersigned finds these expenses are of the type typically charged to a client. At first blush the total expense seems high, but an examination of the itemized receipt shows that the expense was reasonable. The bulk of the cost came from copying charges and those charges are actually less than Plaintiff's claimed in-house per-page copying charges (see *infra*, Section B(1)). The undersigned recommends a 50% recovery of these trial expenses, in line with the recovery rate the undersigned found for attorney trial work. This totals \$3,248.30.

In total, the undersigned recommends \$3,548.44 for this category.

6. Remaining Other Costs

Plaintiff's counsel seek \$9,688.02 in expenses relating to "other costs" (Dkt. No. 756-10 at 9). The Court did not permit taxing of any of these expenses, when they were presented as costs (Dkt. No. 741 at 7). Each of these expenses is discussed in turn.

First, Plaintiff's counsel seek \$162.25 for obtaining TSA SSI clearance for counsel and staff. The undersigned finds this relates to privilege/SSI, which the Court found to be non-compensable work in the Entitlement Order. The undersigned therefore does not recommend awarding these expenses.

Second, Plaintiff's counsel seek \$5 for obtaining a sheriff's report from the San Mateo County Sheriff in 2005. This relates to a dismissed defendant and the undersigned recommends no recovery of this expense.

Third, Plaintiff's counsel seek \$662.79 for translation of a police report from Malay to English in 2013. The undersigned finds that this is an expense that would reasonably be charged to a client and recommends that 50% of the expense (equivalent to the relevant default recovery rate at the time) be awarded. This totals \$331.40.

1 *Fourth*, Plaintiff's counsel seek \$727.32 for eight copies of Professor Kahn's book, *Mrs.*
 2 *Shipley's Ghost: The Right to Travel and Terrorist Watchlists*. The undersigned does not find that
 3 a client would reasonably be charged for eight copies of the same book, unless the book is so
 4 foundational that numerous attorneys would need to use the book at once. No such showing has
 5 been made here. Accordingly, the undersigned recommends that only one copy of the book be
 6 reimbursed at a recovery rate of 50% (recovery rate that has been applied to work related to
 7 Professor Kahn). This totals \$45.46.

8 *Fifth*, Plaintiff's counsel seek \$1,158.29 in expert witness deposition fees pursuant to Rule
 9 26(b)(4)(E). It appears that these are the remaining fees from the deposition of Professor Kahn on
 10 September 11, 2013 (\$3,016.67) and November 8, 2013 (\$2,149.97) that Plaintiff's counsel
 11 contend have not yet been paid by Defendants (*see* Dkt. No. 693-6 at 18). Defendants, however,
 12 have asserted in their supplemental filing to the special master that they have already paid the
 13 expert fees required (*see* August 29, 2014 Submission to Special Master by Defendants at p. 4
 14 n.4). Since Plaintiff's counsel have not submitted the itemized expert invoice for the September
 15 11, 2013 deposition (only the itemized invoice for the November 8, 2013 deposition), the
 16 undersigned does not have a basis to recommend any further payment for these expert fees.

17 Finally, Plaintiff's counsel seek \$6,972.37 for the preparation of video clips from
 18 Plaintiff's deposition. Since Plaintiff could not be present at the trial in person, these video clips
 19 constituted Plaintiff's testimony at trial. Under this circumstance, the undersigned finds that the
 20 expenditure was of the type reasonably charged to a client. The undersigned recommends that
 21 100% of the expense be awarded (the same recovery rate for attorney's fees related to Plaintiff's
 22 deposition testimony).

23 In total, the undersigned recommends \$7,349.23 be awarded in this category.

24 **B. ALL OTHER EXPENSES.**

25 As discussed earlier, Plaintiff's counsel have resubmitted for consideration those expenses
 26 that were claimed in the original fee application. Unlike the expenses based on the untaxed costs,
 27 however, there are no materials in the record that substantiate any of these claimed expenses and
 28

1 counsel have not submitted any further detail regarding these expenses. As discussed below,
2 while the undersigned does not find this lack of supporting documentation and detail fatal for *all*
3 of these claimed expenses, the undersigned cannot recommend a number of expenses or whole
4 categories of expenses because there is insufficient detail for the undersigned to evaluate whether
5 those expenses were necessary and reasonable.

6 **1. Photocopy Expenses**

7 Plaintiff's counsel seek to recover \$40,625.30 in photocopy expenses at a rate of 20 cents
8 per page (non-color copies), 25 cents per page (non-color copies), or 75 cents per page (color
9 copies) and 15 cents for each scanned page (Dkt. No. 756-10 at 1-217). Defendants object to these
10 expenses and argue that the submission does not offer any explanation that would allow the Court
11 to determine that the *number* of pages copied was reasonable (Dkt. No. 757 at 20).

12 Although Plaintiff's counsel did not submit any further documentation of these expenses,
13 the spreadsheets provided contain sufficient detail (including the number of copies made for each
14 "copy job" and the date on which each copy was made), especially given that all expenses in this
15 category appear to be in-house expenses. Moreover, Plaintiff's counsel's sworn declaration
16 specifies the submitted spreadsheets "were created by consulting the bookkeeping records of
17 plaintiff's counsel, created in the ordinary course of business at the time the costs were incurred,"
18 so the undersigned believes there is sufficient basis to find that the listed copy expenses were
19 tracked contemporaneously and accurately recorded.

20 With one exception, the undersigned finds that the number of copies made seems
21 reasonable. On September, 24, 2010, in addition to the numerous other print/copy jobs recorded,
22 one copy job totaling 4,560 pages was charged (totaling \$912). While occasional copying jobs of
23 hundreds of pages, or even over a thousand pages, might be standard practice at a law firm, this
24 seems to be in error. The undersigned checked the court docket to see if there were any paper-
25 heavy briefings occurring at the time this expense occurred but found nothing that would explain
26 this volume of copying (between July 23, 2010 and November 17, 2010 there were no filings).
27 Accordingly, the undersigned recommends the \$912 associated with the entry not be charged.
28

1 As for the rate at which copies were made, Defendants contend that the charges are not
2 reasonable. The authority cited by Defendants, however, does not set an absolute ceiling for
3 recovery at ten cents a page. While the undersigned recognizes that 20 cents or 25 cents per page
4 for non-color-copies, 75 cents a page for color-copies, and 15 cents a page for scanning are on the
5 upper limits of what a law firm might charge a client (and indeed higher than what Plaintiff's
6 counsel's outside vendor charges), the undersigned does not find these rates to be out of the realm
7 of what might ordinarily be billed to a client and, as mentioned above, counsel has stated in her
8 declaration that these expenses are based on records created when the costs are actually incurred.
9 Accordingly, the undersigned finds the rates reasonable.

10 However, based on the Entitlement Order, the undersigned recommends cutting the
11 expenses in this category so that only 25% of the expenses may be recovered. Copies/scans by
12 attorneys and paralegals by their very nature correlate in substance to the work billed by those
13 attorneys and paralegals. As such, it would not be appropriate under the Entitlement Order to
14 charge 100% of the copies to Defendants, as many of the copies likely were made for non-
15 recoverable issues or for parts of the case that only related to the settled/dismissed defendants.
16 The undersigned accordingly recommends the application of a recovery rate to bring the claimed
17 expenses in line with what should be charged to Defendants. The 25% merits recovery rate (Dkt.
18 No. 787 at 113) is recommended over the "default" recovery rates (*id.* at 19) because that rate also
19 takes into account "good billing judgment" adjustments, which the undersigned believes should be
20 applied to these voluminous photocopy entries.

21 After the removal of the excluded \$912 charge discussed above and application of the
22 recovery percentage, the expenses for this category are \$9,838.33.

23 **2. Messenger/Delivery Services**

24 Plaintiff's counsel seek \$11,597.69 in messenger/delivery service expenses (Dkt. No. 756-
25 10 at 219). Plaintiff's counsel have not submitted any documentation (invoices, receipts, or even
26 credit card statements) or explanation for the claimed expenses in this category, although all of the
27 expenses were charged to counsel by outside vendors.
28

1 Almost half of the total expenses sought in this category are encompassed by one, large
2 non-itemized line-item: “Delivery Services – Copeis [sic] of Sealed Court Filings to Defendants”
3 (\$5,180) by Federal Express between “1/27/2006 – 1/28/2014” (Dkt. No. 756-10 at 222). Without
4 the supporting invoices or further itemization, the undersigned cannot evaluate the expenses
5 encompassed by this huge line-item to determine whether those expenses were reasonable or
6 necessary.

7 The vast majority of the remaining expenses do not specify what documents were
8 delivered or what specific type of delivery service was employed and without that further
9 information, the undersigned cannot assess, for example, whether a \$245 for a single delivery of
10 documents is excessive. Of additional ambiguity is the large number of charges to “file”
11 documents that appear on the public docket (meaning that they were filed via ECF, rather than in
12 hard copy). Finally, the amounts charged for items with identical descriptions vary significantly.
13 For example, “Deliver Chambers Copies to Judge Alsup” is charged in amounts ranging from \$55
14 to \$245. These differences are not explained by different vendors or changes in time, as the same
15 vendor will charge two different prices for that listed service in the same week. Without the
16 supporting invoices or further detail, the undersigned cannot evaluate these expenses to determine
17 whether they are reasonable or necessary.

18 Expenses in this category are unlike the in-house copying expenses for which it makes
19 sense that no independent documentation might be available to further substantiate expenses. The
20 Entitlement Order specified that “detailed documents” supporting counsel’s expense requests must
21 be served with the revised application and also noted that the previously-submitted spreadsheets
22 (identical to the instant spreadsheets) were “largely insufficiently detailed” (Dkt. No. 739 at 29).
23 Even after this admonition, Plaintiff’s counsel failed to submit any substantiating materials or
24 sufficiently detailed descriptions of the expenses. The undersigned therefore must recommend no
25 recovery for this category

26 **3. Court Transcript Expenses**

27 Plaintiff’s counsel seek \$9,125.49 for Court Transcript Expenses (Dkt. No. 756-10 at 219).
28

1 Plaintiff's counsel have not submitted any documentation (invoices, receipts, or even credit card
 2 statements) or explanation for the claimed expenses, although all of the expenses were charged to
 3 counsel through invoice by outside vendors (generally court reporters). The dates provided in the
 4 spreadsheet appear to correspond to the date of the proceeding for which the transcript was
 5 prepared, not the date of the invoice or the date of the transcript order. With a few exceptions, the
 6 undersigned therefore cannot determine whether transcripts were ordered for use in the above-
 7 captioned matter or were ordered *after* the conclusion of the above-captioned matter, as appears to
 8 be the case for the transcript of the May 18, 2006 proceedings for which a transcript was not
 9 ordered until July 14, 2014 (Dkt. No. 777).

10 The undersigned was able, however, to locate "transcript orders" by conducting
 11 independent research on the public docket. The undersigned located the following transcripts that
 12 were ordered during the life-span of the case: transcript of April 18, 2013 Hearing re: Plaintiff's
 13 Motion to Compel Further Written Discovery Responses & Compel Rule 30(b)(6) Depositions
 14 (line item 11) (Dkt. No. 469); transcript of July 23, 2013 Hearing re: Defendants' Motion for
 15 Summary Judgment (line item 14) (Dkt. No. 587); transcript of November 15, 2013 Final Pre-
 16 Trial Conference (line item 15) (Dkt. No. 587); and December 2, 2013 to December 6, 2013 Daily
 17 Trial Transcripts (line item 16) (Dkt. No. 622). The undersigned recommends that these
 18 transcripts be awarded at the same recovery rate at which the underlying attorney work was
 19 awarded: 25% for line item 11 (*see* Dkt. No. 787 at 84) and 50% for line items 14, 15, and 16 (*id.*
 20 at 105, 107, 109). This totals \$2,944.58 in recommended expenses. The order dates of these
 21 transcripts demonstrate to the undersigned that they were used in the trial proceedings and that
 22 they were reasonable and necessary expenses that a client would be expected to pay. Beyond
 23 these expenses, the undersigned cannot recommend any further recovery of expenses.

24 **4. On-Line Research Expenses**

25 Plaintiff's counsel seek \$98,717.67 for Westlaw, LexisNexis, and Pacer on-line research
 26 services (Dkt. No. 756-10 at 225). Plaintiff's counsel have not submitted any documentation
 27 (invoices, receipts, or even credit card statements) or explanation for the claimed expenses,
 28

1 although all of the expenses were charged to counsel through invoice by outside vendors.

2 From the billing dates, it appears each line item does not represent an independent research
3 event, but a sum total of the bimonthly or monthly bill received by the outside vendor. There is no
4 breakdown of what services are encompassed in these bi-monthly or monthly bills. The
5 undersigned accordingly cannot assess whether each expense was reasonable and necessary and
6 the undersigned therefore cannot recommend any recovery for expenses in this category.

7 **5. Facsimile Expenses**

8 Plaintiff's counsel seek \$232 in facsimile expenses (Dkt. No. 756-10 at 227). The
9 undersigned finds that these expenses are more like in-house photocopy expenses than they are
10 service charges by an outside vendor and thus no further itemization or documentation is needed.
11 However, for the same reasons as articulated above, the undersigned believes that the 25% merits
12 recovery rate should be applied to these expenses. Application of this recovery percentage results
13 in \$58 in recommended expenses.

14 **6. Outside Copy Service Expenses**

15 Plaintiff's counsel seek \$5,068.86 for "Court Reporter Prepared Binders for Washington
16 D.C. Depositions" for two days of deposition (Dkt. No. 756-10 at 228). Plaintiff's counsel have
17 not submitted any documentation (invoice, receipt, or even credit card statement) or explanation
18 for this large claimed expense although it was charged to counsel through an invoice by an outside
19 vendor. The undersigned accordingly cannot assess whether the total expense was reasonable and
20 necessary and the undersigned therefore cannot recommend any recovery this category.

21 **7. Privileged Investigation Services**

22 Plaintiff's counsel seek \$50 for "Privileged Investigation Services" (Dkt. No. 756-10 at
23 229). Plaintiff's counsel have not submitted any documentation (invoice, receipt, or even credit
24 card statement) or explanation for this expense although it was charged to counsel through an
25 invoice by an outside vendor. The undersigned accordingly cannot assess whether the total
26 expense was reasonable and necessary and the undersigned therefore cannot recommend any
27 recovery this category.

1 **8. Long-Distance Telephone Service Expenses**

2 Plaintiff's counsel seek \$21.48 for long distance telephone service (Dkt. No. 756-10 at
3 230). Plaintiff's counsel have not submitted any documentation (invoice, receipt, or even credit
4 card statement) or explanation for these expenses although they were charged to counsel through
5 an invoice by an outside vendor. The undersigned accordingly cannot assess whether the total
6 expense was reasonable and necessary and the undersigned therefore cannot recommend any
7 recovery this category.

8 **9. Travel Expenses**

9 Plaintiff seeks \$40,335.68 in travel expenses (Dkt. No. 756-10 at 231). Plaintiff's counsel
10 have not submitted any documentation (invoices, receipts, or even credit card statements) or
11 explanation for the claimed expenses, although all of the expenses were charged to counsel by
12 outside vendors. Without any invoices or receipts, or even simply more detailed records, the
13 undersigned cannot determine the reasonableness of the travel expenses as there is no information
14 on individual room rates, dates of occupancy, quality of the rooms, whether the invoices include
15 room service or other charges, etc. *See Baldi Bros. Constructors v. United States*, 52 Fed. Cl. 78,
16 87 (Fed. Cl. 2002). Similarly, without invoices for the parking charges or meal charges, the
17 undersigned cannot determine whether the charges were necessary or reasonable.

18 Moreover, many of the expenses do not appear reasonable on their face and are
19 insufficiently itemized. As but one example, Plaintiff's counsel seek \$21,072.79 "flight, lodging
20 and meals for two attorneys, Plaintiff and her daughter" (Dkt. No. 756-10 at 232). This claimed
21 expense is not only vague and unsupported (it only specifies the airline carrier names), but it
22 exceeds the bounds of what a reasonable client would pay and includes expenses that are not
23 recoverable. *Baldi Bros.* 52 Fed. Cl. at 86 (explaining travel expenses of the plaintiff or the
24 plaintiff's agents are not recoverable). Similarly, there are a number of expenses for lodging in
25 San Francisco for routine hearings, when counsel's office is only approximately one hour away
26 and it is unclear why overnight lodging was necessary.

27 The undersigned accordingly does not recommend recovery for any expenses in this
28

1 category.

2 **10. Expert Fees**

3 Plaintiff's counsel seek \$88,446.01 in expert fees (Dkt. No. 756-10 at 233). Notably, a
4 portion of the fees are sought for work relating to Professor Sinnar's assistant, which does not
5 appear to relate to recoverable work under the Entitlement Order.

6 Each expense in the category is simply described as "Expert Fees" and is not divided
7 beyond overall monthly charges. With the exception of Plaintiff's counsel's declaration
8 specifying that Professor Kahn charged at a rate of \$500 per hour and expert Shirin Sinnar's
9 research assistant charged at a rate of \$40 an hour, there is no supporting documentation for the
10 claimed "expert fees." There is no indication if all of the claimed expenses are for the expert's
11 billed time, or if some of the amounts include the expert's expenses. Expert fees, however, "must
12 be both reasonable and adequately supported by documentation." *See Baldi Bros.* 52 Fed. Cl. at
13 86. The undersigned recommends none of the expenses in this category.

14 **CONCLUSION**

15 For the reasons stated herein, the undersigned recommends \$34,768.71 in expenses be
16 awarded to Plaintiff.

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18 **IT IS SO RECOMMENDED.**

19 Dated: September 23, 2014

20 /s/
GINA MOON
21 Special Master
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